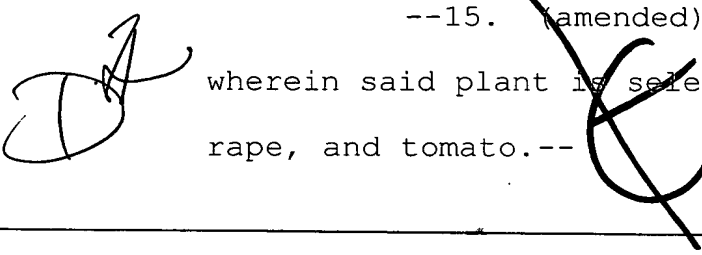


Amend claim 15 as follows:

--15. (amended) The method according to claim 13, wherein said plant is selected from the group consisting of maize, rape, and tomato.--

R E M A R K S

The present application is being refiled as a CPA with this amendment. Applicants respectfully request that the Amendment After Final Rejection filed on May 13, 2002 be entered in the application.

The present application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action for the following reasons as set forth below.

Claim 13 is amended so as to specify that the transgenic plant according to the invention is cultivated for seed or fruit production. Accordingly, "tobacco" in claim 15 is cancelled. The support for this modification is found on page 4, lines 5-7, lines 38-39, and page 5, line 1 and page 6, lines 12-18.

Actually, in the present application, male sterility is applied to transgenic plant or to a part of a transgenic plant (page 3, lines 33-35). According to the specification, a "part" of a plant encompasses fruits (page 4, lines 5-6). Furthermore, maize is an example of a transgenic plant according to the

invention (page 4, line 38 and following). It is well known that maize is useful for seed production.

At page 6, lines 12-18, the term "production" obviously relates to seed or fruit production since it refers to pollinating male sterile plants with fertile counterparts and harvesting the females (*i.e.* the fertilized male sterile plants that therefore produce seed or fruit).

Therefore, the present application clearly contemplates the use of male sterile plant for fruit or seed production.

Concerning the 35 U.S.C. § 103 rejection applied in the Final Office Action of October 9, 2001, as amplified in the Advisory Action of June 3, 2002..

Fabijanski et al. describe the use of male sterility for seed production but does not teach the interest of using such plants to prevent transgene escape.

As to Ellstrand et al., the authors stress on the fact that male sterility could be put into practice "if the crop's product is not a seed or fruit" (page 439, right column, lines 14-16).

Thus, one skilled in the art would not have combined Fabijanski et al. and Ellstrand et al. in view of the clear limitation expressed in Ellstrand et al.

Actually, this express restriction in Ellstrand et al. would have diverted one skilled in the art from the invention since this prior art reference states that male sterility to

control transgene dissemination is suitable to seed or fruit production.

As regards to Paul et al. and Worall et al., both references disclose the use of male sterility genes to produce male sterile tobacco.

However, it is well known that tobacco is cultured for its leaves and not for fruits or seeds. Therefore, the teaching of these documents would not have given information about the feasibility of applying male sterility in the context of fruit or seed production.

Nyers et al. would not have further prompted one skilled in the art to carry out the invention.

Actually, this abstract deals with both genetic sterility and male sterility.

Point (1) relates to prevention of gene escape in connection with genetic sterility, i.e. male and female sterility. This analysis is supported by the fact that the authors continuously refer to "sterile" trees (title, lines 2, 5, 6, and 11 for instance). Furthermore, genetic sterility is described as having an impact on the overall tree metabolism by eliminating an energy consuming post, i.e. the sexual reproduction:

"sterile trees would have enhanced wood production due to removal of the drain of sexual reproduction" (lines 5-6).

Removal the drain of sexual reproduction necessarily implies that both male and female reproductive organs are removed.

Therefore in Nyers et al., the term "genetic sterility" means male and female sterility.

Nyers refers to male sterility only once, and only in the particular context of seed production (point (4)). One skilled in the art indeed knows that male sterility, obtained either by genetic engineering or detasseling, makes it possible to carry out specific crosses between elected pollinators (fertile plants) and male sterile plants (i.e. "female" plants to be pollinated). Yet this aspect relates to a question of yield in seed production.

In no event Nyers et al. connected male sterility with prevention of transgene escape.

Rather Nyers et al. teach that complete sterility provides protection against transgene escape. It is therefore obvious that this solution cannot be applied in the context of seed or fruit production that requires partial fertility.

This abstract thus does not give clues about the reasonable expectation of success as regards to using male sterility in the context of fruit or seed production.

Therefore the combination of the cited prior art would not have given any incentive to the one skilled in the art to carry out the invention. The 35 U.S.C. §103 objection should therefore be withdrawn.

PEREZ et al. S.N. 09/380,086

In light of the amendments discussed above, Applicants believe that the present application is in condition for allowance and an early indication of the same is respectfully requested.

If the Examiner has any questions or requires clarification, the Examiner may contact the undersigned Attorney so that this application may continue to be expeditiously advanced.

Attached hereto is a marked-up version of the changes made to the specification and claims. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,

YOUNG & THOMPSON

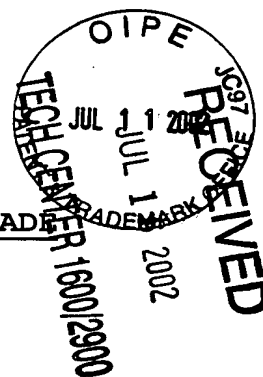
By

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July 11, 2002

PEREZ et al. S.N. 09/380,086



VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 13 has been amended as follows:

--13. (amended) A method for preventing dissemination of a transgene of interest via pollen from a transgenic plant incorporating said transgene, comprising integrating said transgene in a plant rendered male-sterile, whereby said transgene is prevented from being disseminated by pollen of said plant, wherein said plant is cultivated for seed or fruit reduction.--

Claim 15 has been amended as follows:

--15. (amended) The method according to claim 13, wherein said plant is selected from the group consisting of maize, rape, [tobacco] and tomato.--